

NATURAL RESOURCES CODE
TITLE 8. ACQUISITION OF RESOURCES
CHAPTER 183. CONSERVATION EASEMENTS
SUBCHAPTER A. CONSERVATION EASEMENTS GENERALLY

Sec. 183.001. DEFINITIONS. In this chapter:

(1) "Conservation easement" means a nonpossessory interest of a holder in real property that imposes limitations or affirmative obligations designed to:

(A) retain or protect natural, scenic, or open-space values of real property or assure its availability for agricultural, forest, recreational, or open-space use;

(B) protect natural resources;

(C) maintain or enhance air or water quality; or

(D) preserve the historical, architectural, archeological, or cultural aspects of real property.

(2) "Holder" means:

(A) a governmental body empowered to hold an interest in real property under the laws of this state or the United States; or

(B) a charitable corporation, charitable association, or charitable trust created or empowered to:

(i) retain or protect the natural, scenic, or open-space values of real property;

(ii) assure the availability of real property for agricultural, forest, recreational, or open-space use;

(iii) protect natural resources;

(iv) maintain or enhance air or water quality; or

(v) preserve the historical, architectural, archeological, or cultural aspects of real property.

(3) "Third-party right of enforcement" means a right provided in a conservation easement to enforce any of its terms granted to a governmental body, charitable corporation, charitable association, or charitable trust that is eligible to be a holder but is not a holder.

(4) "Servient estate" means the real property burdened by the conservation easement.

Added by Acts 1983, 68th Leg., p. 2438, ch. 434, Sec. 1, eff. Sept. 1, 1983.

Sec. 183.002. CREATION, CONVEYANCES, ACCEPTANCES, AND DURATION. (a) Except as otherwise provided in this chapter, a conservation easement may be created, conveyed, recorded, assigned, released, modified, terminated, or otherwise altered or affected in the same manner as other easements.

(b) A right or duty in favor of or against a holder and a right in favor of a person having a third-party right of enforcement does not arise under a conservation easement before its acceptance by the holder and the recordation of the acceptance.

(c) Except as provided by Section 183.003(b) of this code, a conservation easement is unlimited in duration unless the instrument creating it makes some other provision.

(d) An interest that exists in real property at the time a conservation easement is created is not impaired unless the owner of the interest is a party to the conservation easement or consents to it.

(e) A conservation easement must be created in writing, acknowledged and recorded in the deed records of the county in which the servient estate is located, and must include a legal description of the real property which constitutes the servient estate.

(f) If land that has been subject to a conservation easement is no longer subject to such easement, an additional tax is imposed on the land equal to the difference, if any, between the taxes imposed on the land for each of the five years preceding the year in which the easement terminates and the taxes that would have been imposed had the land not been subject to a conservation easement in each of those years, plus interest at an annual rate of seven percent calculated from the dates on which the differences would have become due.

Added by Acts 1983, 68th Leg., p. 2438, ch. 434, Sec. 1, eff. Sept. 1, 1983.

Sec. 183.003. JUDICIAL ACTIONS. (a) An action affecting a conservation easement may be brought by:

(1) an owner of an interest in the real property burdened by the easement;
(2) a holder of the easement;
(3) a person having a third-party right of enforcement; or
(4) a person authorized by some other law.

(b) This chapter does not affect the power of a court to modify or terminate a conservation easement in accordance with the principles of law and equity.

Added by Acts 1983, 68th Leg., p. 2438, ch. 434, Sec. 1, eff. Sept. 1, 1983.

Sec. 183.004. VALIDITY. A conservation easement is valid even though:

(1) it is not appurtenant to an interest in real property;
(2) it can be or has been assigned to another holder;
(3) it is not of a character that has been recognized traditionally at common law;
(4) it imposes a negative burden;
(5) it imposes affirmative obligations on the owner of an interest in the burdened property or on the holder;
(6) the benefit does not touch or concern real property; or
(7) there is no privity of estate or of contract.

Added by Acts 1983, 68th Leg., p. 2438, ch. 434, Sec. 1, eff. Sept. 1, 1983.

Sec. 183.005. APPLICABILITY. (a) This chapter applies to any interest created on or after September 1, 1983, that complies with this chapter, whether designated as a conservation easement or as a covenant, equitable servitude, restriction, easement, or otherwise.

(b) This chapter applies to any interest created before September 1, 1983, if it would have been enforceable had it been created on or after September 1, 1983, unless retroactive application contravenes the constitution or laws of this state or the United States.

(c) This chapter does not invalidate any interest, whether designated as a conservation or preservation easement or as a covenant, equitable servitude, restriction, easement, or otherwise, that is enforceable under other law of this state.

Added by Acts 1983, 68th Leg., p. 2438, ch. 434, Sec. 1, eff. Sept. 1, 1983.

SUBCHAPTER B. TEXAS FARM AND RANCH LANDS CONSERVATION PROGRAM

Sec. 183.051. PURPOSE. The purpose of the program established under this subchapter is to enable and facilitate the purchase and donation of agricultural conservation easements.

Added by Acts 2005, 79th Leg., ch. 1354, Sec. 2, eff. Sept. 1, 2005.

Sec. 183.052. DEFINITIONS. In this subchapter:

(1) "Agricultural conservation easement" means a conservation easement in qualified land that is designed to accomplish one or more of the following additional purposes:

(A) conserving water quality or quantity;
(B) conserving native wildlife species through protection of their habitat;

(C) conserving rare or sensitive plant species;
or

(D) conserving large tracts of qualified open-space land that are threatened with fragmentation or development.

(2) "Commissioner" means the commissioner of the General Land Office.

(3) "Council" means the Texas Farm and Ranch Lands Conservation Council established under Section 183.061.

(4) "Fund" means the Texas farm and ranch lands conservation fund established under Section 183.058.

(5) "Land office" means the General Land Office.

(6) "Program" means the Texas farm and ranch lands conservation program established under this subchapter.

(7) "Purchase of agricultural conservation easement" means the purchase from a willing seller of an agricultural conservation easement.

(8) "Qualified easement holder" means a holder that is:

(A) a state agency or a municipality; or
(B) an organization that is exempt from federal

income taxation under Section 501(a), Internal Revenue Code of 1986, as an organization described by Section 501(c)(3) of that code and that is organized for the purpose of preserving agriculture, open space, or natural resources.

(9) "Qualified land" means qualified open-space land, as that term is defined by Section 23.51, Tax Code. Added by Acts 2005, 79th Leg., ch. 1354, Sec. 2, eff. Sept. 1, 2005.

Sec. 183.053. PROGRAM. The Texas farm and ranch lands conservation program is established as a program of the land office for the purpose of administering the assistance to be provided by the fund for the purchase of agricultural conservation easements. Added by Acts 2005, 79th Leg., ch. 1354, Sec. 2, eff. Sept. 1, 2005.

Sec. 183.054. TERMS OF AGRICULTURAL CONSERVATION EASEMENT. (a) An agricultural conservation easement under this subchapter must be perpetual or for a term of 30 years.

(b) The owner of qualified land and a potential purchaser of an agricultural conservation easement should consider and negotiate easement terms, including the following considerations:

(1) whether the landowner will receive a lump sum or annual payments;

(2) whether the term of the easement shall be perpetual or for a term of 30 years;

(3) whether a term easement is renewable;

(4) whether the landowner retains limited development rights; and

(5) the purchase price of the easement.

(c) An agricultural conservation easement may not be assigned to or enforced by a third party without the express written consent of the landowner.

Added by Acts 2005, 79th Leg., ch. 1354, Sec. 2, eff. Sept. 1, 2005.

Sec. 183.055. TERMINATION OF EASEMENT. (a) Any time after an agricultural conservation easement is acquired with a grant awarded under this subchapter, the landowner may request that the council terminate the easement as provided by Subsection (b) on the ground that the landowner is unable to meet the conservation goals as described by Section 183.052(1). The termination request must contain a verifiable statement of impossibility.

(b) On receipt of the request for termination, the council shall notify the qualified easement holder and conduct an inquiry. Not later than the 180th day after the date the council receives the request, the council shall notify the parties of the decision to grant or deny the request for termination. Either party may appeal the decision in district court not later than the 45th day after the date of the notification.

Added by Acts 2005, 79th Leg., ch. 1354, Sec. 2, eff. Sept. 1, 2005.

Sec. 183.056. REPURCHASE BY LANDOWNER. (a) In this section:

(1) "Agricultural value" means the price as of the appraisal date a buyer willing, but not obligated, to buy would pay for a farm or ranch unit with land comparable in quality and composition to the subject property, but located in the nearest location where profitable farming or ranching is feasible.

(2) "Fair market value" means the price as of the appraisal date that a buyer willing, but not obligated, to buy would pay for the land at its best and most beneficial use under any obtainable development zoning category.

(b) If a request for termination of an agricultural conservation easement is granted under Section 183.055, the commissioner shall order an appraisal of the fair market value and the agricultural value of the property subject to the easement. The landowner shall bear the cost of the appraisal.

(c) Not later than the 180th day after the date of the appraisal under Subsection (b), the landowner must pay to the qualified easement holder an amount equal to the difference between the fair market value and the agricultural value. The qualified easement holder shall pay to the fund any amounts received under this subsection, not to exceed the amount paid by the fund for purchase of the easement.

(d) Not later than the 30th day after the date of payment by the landowner under Subsection (c), the qualified easement holder shall terminate the easement.

(e) If the request for termination is denied or if the landowner fails to make the payment required by Subsection (c) in the time required by that subsection, the landowner may not submit another request for termination of the easement before the fifth anniversary of the date of the last request.

Added by Acts 2005, 79th Leg., ch. 1354, Sec. 2, eff. Sept. 1, 2005.

Sec. 183.057. PROTECTED LAND; NOTICE OF TAKING. (a) A department or agency of this state, a county, a municipality, another political subdivision, or a public utility may not approve any program or project that requires the use or taking through eminent domain of private land encumbered by an agricultural conservation easement purchased under this subchapter unless the governmental entity or public utility acting through its governing body or officers determines that:

(1) there is no feasible and prudent alternative to the use or taking of the land; and

(2) the program or project includes all reasonable planning to minimize harm to the land resulting from the use or taking.

(b) A determination required by Subsection (a) may be made only at a properly noticed public hearing.

(c) The governing body or officers of the governmental entity or public utility may consider clearly enunciated local preferences, and the provisions of this subchapter do not constitute a mandatory prohibition against the use of the area if the determinations required by Subsection (a) are made.

(d) If, after making the determination required by Subsection (a), a department or agency of this state, a county, a municipality, another political subdivision, or a public utility acquires by eminent domain a fee simple interest in land encumbered by an agricultural conservation easement purchased under this subchapter:

(1) the easement on the condemned property terminates; and

(2) the entity exercising the power of eminent domain shall:

(A) pay for an appraisal of the fair market value, as that term is defined by Section 183.056, of the property subject to condemnation;

(B) pay to the qualified easement holder an amount equal to the amount paid by the holder for the portion of the easement affecting the property to be condemned;

(C) pay to the landowner an amount equal to the fair market value of the condemned property less the amount paid to the qualified easement holder under Paragraph (B); and

(D) pay to the landowner and the qualified easement holder any additional damages to their interests in the remaining property, as determined by the special commissioners under Section 21.042, Property Code.

(e) If, after making the determination required by Subsection (a), a department or agency of this state, a county, a municipality, another political subdivision, or a public utility acquires by eminent domain an interest other than a fee simple interest in land encumbered by an agricultural conservation easement purchased under this subchapter:

(1) the entity exercising the power of eminent domain shall pay for an appraisal of the fair market value, as that term is defined by Section 183.056, of the property subject to condemnation; and

(2) the special commissioners shall consider the fair market value as the value of the property for purposes of assessing damages under Section 21.042, Property Code.

(f) The qualified easement holder shall pay to the fund any amounts received under Subsections (d) and (e), not to exceed the amount paid by the fund for the purchase of the easement.

Added by Acts 2005, 79th Leg., ch. 1354, Sec. 2, eff. Sept. 1, 2005.

Sec. 183.058. TEXAS FARM AND RANCH LANDS CONSERVATION FUND. (a) The Texas farm and ranch lands conservation fund is an account in the general revenue fund that may be appropriated only to the land office to be used as provided by Subsection (b). The fund may not be used for grants to purchase or acquire any right or interest in property by eminent domain. The fund consists of:

(1) money appropriated by the legislature to the fund;

(2) public or private grants, gifts, donations, or contributions; and

(3) funds from any other source, including proceeds from the sale of bonds, state or federal mitigation funds, or funds from any local, state, or federal program.

(b) The fund may be used only:

(1) to award grants to qualified easement holders for

the purchase of agricultural conservation easements;

(2) to pay transaction costs related to the purchase of agricultural conservation easements, which may include reimbursement of appraisal costs; and

(3) to pay associated administrative costs of the land office, not to exceed five percent of the money in the fund.

Added by Acts 2005, 79th Leg., ch. 1354, Sec. 2, eff. Sept. 1, 2005.

Sec. 183.059. ADMINISTRATION OF FUND. (a) The council may:

(1) adopt rules necessary to perform program duties under this subchapter;

(2) request, accept, and use gifts, loans, donations, aid, appropriations, guaranties, subsidies, grants, or contributions of any item of value for the furtherance of any purposes of this subchapter;

(3) establish, charge, and collect fees, charges, and penalties in connection with the programs, services, and activities provided for by this subchapter;

(4) make, enter into, and enforce contracts and agreements, and take other actions as may accomplish any of the purposes of this subchapter;

(5) seek ways to coordinate and leverage public and private sources of funding;

(6) adopt best practices and enforcement standards for the evaluation of easements purchased through grants from the fund;

(7) establish a protocol for the purchase of agricultural conservation easements and for the distribution of funds to approved applicants;

(8) administer grants awarded to successful applicants;

(9) ensure that agricultural conservation easements purchased under this subchapter are not inconsistent with the preservation of open space and the conservation of wildlife habitat or water; and

(10) approve the termination of easements and take any other action necessary to further the goals of the program.

(b) To receive a grant from the fund under this subchapter, an applicant who is qualified to be an easement holder under this subchapter must submit an application to the council. The application must:

(1) set out the parties' clear conservation goals consistent with the program;

(2) include a site-specific estimate-of-value appraisal by a licensed appraiser qualified to determine the market value of the easement;

(3) demonstrate that the applicant is able to match 50 percent of the amount of the grant being sought, considering that the council may choose to allow a donation of part of the appraised value of the easement to be considered as in-kind matching funds; and

(4) include a memorandum of understanding signed by the landowner and the applicant indicating intent to sell an agricultural conservation easement and containing the terms of the contract for the sale of the easement.

(c) For the purposes of determining the amount of a grant under this subchapter, the value of an agricultural conservation easement shall be determined by a site-specific estimate-of-value appraisal performed by a licensed, qualified appraiser.

Added by Acts 2005, 79th Leg., ch. 1354, Sec. 2, eff. Sept. 1, 2005.

Sec. 183.060. CRITERIA FOR AWARDING GRANTS. The council shall adopt a scoring process to be used in evaluating applications that considers the following:

(1) maintenance of landscape and watershed integrity to conserve water and natural resources;

(2) protection of highly productive agricultural lands;

(3) protection of habitats for native plant and animal species, including habitats for endangered, threatened, rare, or sensitive species;

(4) susceptibility of the subject property to subdivision, fragmentation, or other development;

(5) potential for leveraging state money allocated to the program with additional public or private money;

(6) proximity of the subject property to other protected lands;

(7) the term of the proposed easement, whether

perpetual or for a term of 30 years; and

(8) a resource management plan agreed to by both parties and approved by the council.

Added by Acts 2005, 79th Leg., ch. 1354, Sec. 2, eff. Sept. 1, 2005.

Sec. 183.061. TEXAS FARM AND RANCH LANDS CONSERVATION COUNCIL. (a) The Texas Farm and Ranch Lands Conservation Council is established to advise and assist the commissioner with administration of the program and to select applicants to receive grants under this subchapter using the criteria adopted by the council under Section 183.060. The council consists of:

(1) six members appointed by the governor as follows:

(A) one member who operates a family farm or ranch in this state;

(B) one member who is the designated representative of an agricultural banking or lending organization and who has significant experience lending for farms and ranches or lands encumbered by conservation easements;

(C) two members who are the designated representatives of a statewide agricultural organization in existence in this state for not less than 10 years;

(D) one member who is a designated representative of a statewide nonprofit organization that represents land trusts operating in this state; and

(E) one member from a state institution of higher education who has significant experience with natural resources issues; and

(2) four ex officio members as follows:

(A) the commissioner;

(B) the commissioner of agriculture or the commissioner's designee;

(C) the presiding officer of the Parks and Wildlife Commission or the presiding officer's designee; and

(D) the state conservationist of the Natural Resources Conservation Service of the United States Department of Agriculture or a designee of that person, who serves as a nonvoting member.

(b) Appointed members of the council serve staggered terms of six years, with two of the members' terms expiring February 1 of each odd-numbered year.

(c) Appointments to and removal from the council shall be made by the governor without regard to the race, color, disability, sex, religion, age, or national origin of the appointees.

(d) The commissioner or the commissioner's designee shall serve as the presiding officer of the council and shall designate from among the members of the council an assistant presiding officer to serve in that capacity at the will of the commissioner. The council may choose from its members other officers as the council considers necessary.

(e) A member of the council is not entitled to compensation for service on the council but is entitled to reimbursement of the necessary and reasonable travel expenses incurred by the member while conducting the business of the council, as provided for state employees by the General Appropriations Act.

(f) The council shall meet not less than once each year.

(g) A person may not be appointed as a council member if the person or the person's spouse:

(1) is employed by or participates in the management of a business entity or other organization receiving money under the program;

(2) owns or controls, directly or indirectly, more than a 10 percent interest in a business entity or other organization receiving money under the program; or

(3) uses or receives a substantial amount of tangible goods, services, or money under the program other than reimbursement authorized by law for travel expenses as described by Subsection (e).

(h) In this subsection, "Texas trade association" means a cooperative and voluntarily joined statewide association of business or professional competitors in this state designed to assist its members and its industry or profession in dealing with mutual business or professional problems and in promoting their common interest. A person may not be an appointed member of the council if:

(1) the person is an officer, employee, or paid consultant of a Texas trade association for an occupation or

profession with an interest in land conservation that is related to the occupation or profession; or

(2) the person's spouse is an officer, manager, or paid consultant of a Texas trade association for an occupation or profession with an interest in land conservation that is related to that occupation or profession.

(i) A person may not be an appointed member of the council or act as the general counsel to the council if the person is required to register as a lobbyist under Chapter 305, Government Code, because of the person's activities for compensation on behalf of an occupation or profession with an interest in land conservation that is related to that occupation or profession.

(j) It is a ground for removal from the council if a member:

(1) is ineligible for membership under this section;

(2) cannot, because of illness or disability, discharge the member's duties for a substantial part of the member's term; or

(3) is absent from more than half of the regularly scheduled council meetings that the member is eligible to attend during a calendar year without an excuse approved by a majority vote of the council.

(k) The validity of an action of the council is not affected by the fact that it is taken when a ground for removal of a participating council member exists.

(l) If the presiding officer has knowledge that a potential ground for removal exists, the presiding officer shall notify the commissioner and the governor that a potential ground for removal exists.

(m) The presiding officer or the presiding officer's designee, with the assistance of staff of the land office, shall provide to members of the council information regarding a member's responsibilities under applicable laws relating to standards of conduct for state officers.

(n) A person who is appointed to and qualifies for office as a member of the council may not vote, deliberate, or be counted as a member in attendance at a meeting of the council until the person completes a training program that complies with this section. The training program must provide the person with information regarding:

(1) the legislation that created the council;

(2) the program to be administered under this subchapter;

(3) the role and functions of the council;

(4) the rules of the council, with an emphasis on the rules that relate to disciplinary and investigatory authority;

(5) the current budget for the council;

(6) the results of the most recent formal audit of the council;

(7) the requirements of:

(A) the open meetings law, Chapter 551, Government Code;

(B) the public information law, Chapter 552, Government Code;

(C) the administrative procedure law, Chapter 2001, Government Code; and

(D) other laws relating to public officials, including conflict-of-interest laws; and

(8) any applicable policies adopted by the council or the Texas Ethics Commission.

(o) A person appointed to the council is entitled to reimbursement, as provided by the General Appropriations Act, for the travel expenses incurred in attending the training program regardless of whether the attendance at the training program occurs before or after the person qualifies for office.

Added by Acts 2005, 79th Leg., ch. 1354, Sec. 2, eff. Sept. 1, 2005.

Sec. 183.062. EFFECT ON TAX APPRAISAL. An agricultural conservation easement under this subchapter does not affect the eligibility of the property subject to the easement for appraisal for ad valorem tax purposes under Subchapter D, Chapter 23, Tax Code.

Added by Acts 2005, 79th Leg., ch. 1354, Sec. 2, eff. Sept. 1, 2005.

Sec. 183.063. REPORT TO TEXAS DEPARTMENT OF TRANSPORTATION. Not later than the 10th day after the date of a closing of a purchase of an easement under this subchapter, the land office shall provide the Texas Department of Transportation a legal

description of the property subject to the easement and shall include with the description the date the closing occurred.
Added by Acts 2005, 79th Leg., ch. 1354, Sec. 2, eff. Sept. 1, 2005.